

IC 33-33-49

Chapter 49. Marion County

IC 33-33-49-1

Application

Sec. 1. IC 33-29-1 does not apply to this chapter.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-2

Judicial district

Sec. 2. Marion County constitutes the nineteenth judicial circuit.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-3

"City-county council" defined

Sec. 3. As used in this chapter, "city-county council" refers to the Indianapolis, Marion County city-county council.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-4

"Clerk" defined

Sec. 4. As used in this chapter, "clerk" refers to the clerk of the Marion superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-5

"Court" defined

Sec. 5. As used in this chapter, "court" refers to the Marion superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-6

Establishment; qualification of judges; residency

Sec. 6. (a) There is established a superior court in Marion County. The court consists of:

(1) thirty-five (35) judges beginning January 1, 2007, and ending December 31, 2008; and

(2) thirty-six (36) judges beginning January 1, 2009.

(b) To be qualified to serve as a judge of the court, a person must be, at the time a declaration of candidacy or a petition of nomination under IC 3-8-6 is filed:

(1) a resident of Marion County; and

(2) an attorney who has been admitted to the bar of Indiana for at least five (5) years.

(c) During the term of office, a judge of the court must remain a resident of Marion County.

As added by P.L.98-2004, SEC.12. Amended by P.L.80-2006, SEC.12.

IC 33-33-49-7

Name

Sec. 7. The court must be named the Marion superior court.
As added by P.L.98-2004, SEC.12.

IC 33-33-49-8**Seal**

Sec. 8. The court must have a seal consisting of a circular disk containing the words, "Marion Superior Court", "Indiana", and "Seal", and a design as the court may determine, an impression of which must be spread of record upon the order book of the court.
As added by P.L.98-2004, SEC.12.

IC 33-33-49-9**Repealed**

(Repealed by P.L.201-2011, SEC.115.)

IC 33-33-49-10**Court of record; force and effect of judgments, decrees, and orders**

Sec. 10. The court is a court of record. The court's judgments, decrees, orders, and proceedings have the same effect and shall be enforced in the same manner as those of the circuit court.
As added by P.L.98-2004, SEC.12.

IC 33-33-49-11**Power and authority; removal of presiding judge; incidental powers of judges**

Sec. 11. (a) The court may adopt rules for conducting the business of the court. Except as provided in subsection (b), in all matters action of the court may only be taken by a vote of a majority of the judges sitting at the time the vote is taken.

(b) Action of the court to remove the presiding judge or either associate presiding judge may only be taken by a vote of two-thirds (2/3) of the judges sitting at the time the vote is taken.

(c) The court has all the powers incident to a court of record in relation to the attendance of witnesses, punishment of contempts, and enforcement of the court's orders. The judges may administer oaths, solemnize marriages, take and certify acknowledgments of deeds and all legal instruments, and to give all necessary certificates for the authentication of the records and proceedings in the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-12**Orders, writs, appointments, and commissions**

Sec. 12. The court may do the following:

- (1) Grant restraining orders and injunctions.
- (2) Issue writs of habeas corpus.
- (3) Appoint receivers, masters, and commissioners to:
 - (A) convey real property;
 - (B) grant commissions for the examination of witnesses; and
 - (C) appoint other officers necessary to transact the business

of the court.
As added by P.L.98-2004, SEC.12.

IC 33-33-49-13

Judge; term; election

Sec. 13. (a) Each judge of the court shall be elected for a term of six (6) years that begins January 1 after the year of the judge's election and continues through December 31 in the sixth year. The judge shall hold office for the six (6) year term or until the judge's successor is elected and qualified. A candidate for judge shall run at large for the office of judge of the court and not as a candidate for judge of a particular room or division of the court.

(b) At the primary election held in 2008 and every six (6) years thereafter, a political party may nominate not more than eight (8) candidates for judge of the court. At the primary election held in 2006 and every six (6) years thereafter, a political party may nominate not more than ten (10) candidates for judge of the court. The candidates shall be voted on at the general election. Other candidates may qualify under IC 3-8-6 to be voted on at the general election.

(c) The names of the party candidates nominated and properly certified to the Marion County election board, along with the names of other candidates who have qualified, shall be placed on the ballot at the general election in the form prescribed by IC 3-1-1. At the 2008 general election and every six (6) years thereafter, persons eligible to vote at the general election may vote for sixteen (16) candidates for judge of the court. Beginning with the 2006 general election and every six (6) years thereafter, persons eligible to vote at the general election may vote for twenty (20) candidates for judge of the court.

(d) The candidates for judge of the court receiving the highest number of votes shall be elected to the vacancies. The names of the candidates elected as judges of the court shall be certified to the county election board as provided by law.

As added by P.L.98-2004, SEC.12. Amended by P.L.58-2005, SEC.35; P.L.2-2005, SEC.93; P.L.80-2006, SEC.13; P.L.1-2006, SEC.504; P.L.164-2006, SEC.140.

IC 33-33-49-13.5

Rights of municipal court judge serving as part-time judge on December 31, 1997; conditions; part-time judge standing for election; effect of ethics determinations

Sec. 13.5. (a) The municipal court judge:

(1) whose term expires December 31, 1997; and

(2) who is serving as a part-time judge on December 31, 1997; is entitled to continue serving as a part-time judge of the Marion superior court established under IC 33-5.1-2 (before its repeal, now codified at IC 33-33-49-6). The municipal court judge whose term expires December 31, 1997, and who is serving as a part-time judge on that date is entitled to continue serving as a part-time judge of the Marion superior court established under IC 33-5.1-2 (before its

repeal, now codified at IC 33-33-49-6) until midnight December 31, 2000.

(b) The following apply to the part-time judge described in subsection (a):

(1) The judge may not practice criminal law in the Marion superior court but may practice civil law in the Marion superior court.

(2) The judge may convert to full-time status at any time.

(3) The annual salary of the part-time judge shall be equal to the sum of forty percent (40%) of the salary of a full-time superior court judge. The salary of the part-time judge shall be paid on a percentage basis from the same sources providing the salary of a full-time superior court judge.

(c) If the judge serving as part-time judge of the Marion superior court stands for election in the general election held November 7, 2000, and any subsequent election, and is elected as judge of the Marion superior court, the judge may continue to serve as a part-time judge, subject to the provisions of subsection (b).

(d) If it is determined in a judicial ethics action that the judge serving as part-time judge of the Marion superior court may not engage in the practice of civil law before the Marion superior court, the cases in which the judge has entered an appearance or filed any pleadings shall be transferred to the Marion circuit court for further proceedings. The judge may continue to participate in the cases transferred to the circuit court. Cases transferred to the circuit court under this subsection have the same effect as if originally filed in or issued by the Marion circuit court.

As added by P.L.220-2011, SEC.535. Amended by P.L.6-2012, SEC.213.

IC 33-33-49-14

Executive committee; divisions of court

Sec. 14. (a) Not more than thirty (30) days after taking the oath of office, the judges shall meet and designate four (4) of the judges as the executive committee for administrative purposes. The executive committee shall be selected by a vote of two-thirds (2/3) of the judges sitting at the time the vote is taken. If all vacancies cannot be filled by a two-thirds (2/3) vote, vacancies may be filled by such other method as provided by court rule. The executive committee is responsible for the operation and conduct of the court. The executive committee shall operate and maintain the juvenile detention facilities in the county. A member of the executive committee shall serve in the capacity provided by rules adopted by the court under section 11 of this chapter. A member of the executive committee serves for a term of two (2) years beginning on the date of the member's election. Except for the rotation of the presiding judge as provided in subsection (b), any or all of the members elected to the executive committee may be reelected. Of the four (4) judges elected to the executive committee, not more than two (2) may be members of the same political party.

(b) One (1) of the four (4) judges elected to the executive committee shall be elected as presiding judge, and three (3) of the four (4) judges elected to the executive committee shall be elected as associate presiding judges. Beginning with the election of the executive committee in 2007, a presiding judge may not be elected from the same political party as the presiding judge who served the previous term. Each judge who is a member of the executive committee has an equal vote in all matters pertaining to the business of the court when an action requires a majority vote. If a tie vote occurs, the presiding judge shall cast the tiebreaking vote. Any action taken by the executive committee may be overruled by a vote of two-thirds (2/3) of all the judges sitting at the time the vote is taken. The physical reassignment of a judge to a different courtroom requires a unanimous vote of the executive committee. The executive committee shall assign cases, offices, and courtrooms for trial judges or reassignment of newly filed cases in the interests of the speedy, economical, and uniform disposition of cases. All matters of trial dates, continuances, and subpoenas used for trial shall be determined by the trial judge in accordance with rules of the superior court. The executive committee shall perform other duties as determined by rules of the court.

(c) The court shall, by rules of the court, divide the work of the court into various divisions, including but not limited to the following:

- (1) Civil.
- (2) Criminal.
- (3) Probate.
- (4) Juvenile.

(d) The work of each division shall be allocated by the rules of the court.

(e) The judges shall be assigned to various divisions or rooms as provided by rules of the court. Whenever possible, an incumbent judge shall be allowed the option of remaining in a particular room or division. Whenever any action of the court is required, the judges of the court shall act in concert, by a vote under section 11 of this chapter. The court shall keep appropriate records of rules, orders, and assignments of the court.

As added by P.L.98-2004, SEC.12. Amended by P.L.80-2006, SEC.14; P.L.142-2007, SEC.10.

IC 33-33-49-15

Powers and duties of executive committee; appointment and powers of commissioners

Sec. 15. (a) The executive committee, with the approval of two-thirds (2/3) of the judges, shall determine the number of hearing judges, commissioners, referees, bail commissioners, court reporters, probation officers, and other personnel required to efficiently serve the court. The salaries of the personnel shall be fixed and paid as provided by law.

(b) The administrative officers shall perform the duties prescribed

by the executive committee and shall operate under the jurisdiction of the executive committee and serve at the pleasure of the executive committee.

(c) The executive committee shall see that the court at all times is amply provided with supplies and sufficient clerical and other help, including extra reporters or bailiffs, when needed. Each judge shall appoint the judge's court reporters, bailiffs, secretary, commissioners, and clerks. In addition to the specified duties of this subsection, the executive committee shall exercise any other powers and duties that may be assigned to the executive committee by an order book entry signed by a two-thirds (2/3) majority of the judges. At least once each month, a general term conference of all superior division judges must be held, at which the presiding judge shall preside. A special order book must be kept for the court in which shall be entered all special rules, proceedings, and similar matters. During an absence or a vacation of a judge who is a member of the executive committee, the senior superior court judge shall act for the absent member, if necessary.

(d) Notwithstanding any other law, a commissioner appointed under this chapter has all of the powers and duties prescribed for a magistrate under IC 33-23-5. However, the provisions of IC 33-23-5-11 requiring the state to pay the salary of a magistrate do not require the state to pay the salary of a commissioner appointed under this chapter.

(e) If a commissioner appointed under this chapter is appointed as a magistrate in Marion County, the salary of that magistrate shall be paid by the state under IC 33-23-5-11 in the same amount as other magistrates are paid.

(f) The allocation of appointments of commissioners under this chapter shall be determined by agreement between the judges of the superior court and the judge of the circuit court with consideration given to the case load of each court. However, notwithstanding any other law, at least two (2) of the commissioners appointed under this chapter shall be appointed by the judge of the circuit court.

(g) The:

- (1) judge of the circuit court has exclusive authority to appoint commissioners allocated to the circuit court; and
- (2) judges of the superior court have exclusive authority to appoint commissioners allocated to the superior court by a vote of the majority of the judges of the superior court.

(h) Not more than a simple majority of the commissioners appointed under this chapter may be from the same political party.

(i) A commissioner appointed by the:

- (1) judge of the circuit court serves at the pleasure of the judge of the circuit court; and
- (2) judges of the superior court continues in office until removed pursuant to local rule.

As added by P.L.98-2004, SEC.12. Amended by P.L.71-2010, SEC.2; P.L.201-2011, SEC.76.

IC 33-33-49-16

Probate hearing judge; probate commissioner; juvenile referee; bail commissioner; master commissioner; powers and duties

Sec. 16. (a) An appointed probate hearing judge or probate commissioner shall be vested by the judge of the probate division with suitable powers for the handling of all probate matters of the court, including the following:

- (1) Fixing of all bonds.
- (2) Auditing accounts of estates, guardianships, and trusts.
- (3) Accepting reports, accounts, and settlements filed in the court.
- (4) Appointing personal representatives, guardians, and trustees.
- (5) Probating wills.
- (6) Taking or hearing evidence on or concerning matters described in this subsection or any other probate, guardianship, or trust matters in litigation before the court.
- (7) Enforcing court rules.
- (8) Making reports to the court concerning the judge's or commissioner's doings in the proceedings described in this subsection, including reports concerning the commissioner's findings and conclusions regarding the proceedings.

However, all matters handled by a hearing judge or commissioner under this subsection are under the final jurisdiction and decision of the judge of the probate division.

(b) A juvenile referee appointed by the judge of the juvenile division shall have all suitable powers for the handling of the juvenile matters of the court, including the following:

- (1) Fixing of bonds.
- (2) Taking and hearing evidence on or concerning juvenile matters in litigation before the court.
- (3) Enforcing court rules.
- (4) Making reports to the court concerning the juvenile referee's handling of proceedings of the juvenile division of the court.

However, all matters handled by a juvenile referee under this subsection are under final jurisdiction and decision of the judge or judges of the juvenile division designated by rules of the court.

(c) A bail commissioner may fix bonds, including the following:

- (1) Determining whether an individual is to be released on the individual's own recognizance in criminal cases and proceedings.
- (2) Making reports to the court concerning the bail commissioner's activities.

All matters handled by a bail commissioner under this subsection are under the final jurisdiction and decision of the judge or judges of the criminal division as designated by rules of the court.

(d) For any of the purposes specified in this section, a probate hearing judge, probate commissioner, referee, or bail commissioner may do the following:

- (1) Summon witnesses to testify before the probate hearing judge, probate commissioner, referee, or bail commissioner.

(2) Administer oaths and take acknowledgments in connection with duties.

(3) Administer oaths and take acknowledgments generally.

(e) A master commissioner appointed by the court under this section has the powers and duties prescribed for a magistrate under IC 33-23-5-5 through IC 33-23-5-9. A master commissioner shall report the findings in each of the matters before the master commissioner in writing to the judge or judges of the division to which the master commissioner is assigned or as designated by rules of the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-17

Sessions of court; facilities

Sec. 17. (a) The court shall hold sessions in:

- (1) the city-county building in Indianapolis; and
- (2) other places in Marion County as the court determines.

(b) The city-county council shall:

- (1) provide and maintain in the building and at other places in Marion County as the court may determine suitable and convenient courtrooms for the holding of the court, suitable and convenient jury rooms, and offices for the judges, other court officers and personnel, and other facilities as are necessary; and
- (2) provide all necessary furniture and equipment for rooms and offices of the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-18

Books, papers, and records of court

Sec. 18. The clerk, under the direction of the court, shall provide:

- (1) order books;
- (2) judgment dockets;
- (3) execution dockets;
- (4) fee books; and
- (5) other books, papers, and records;

as are necessary for the court. All books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-19

Single order book

Sec. 19. The court shall maintain a single order book for each division or room of the court that may be signed on behalf of the court by the judge of that division or room of the court. The signature of the judge authenticates the actions of the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-20

Laws applicable to court

Sec. 20. All laws of Indiana and rules adopted by the supreme court governing the circuit court in matters of pleadings, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court apply to and govern the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-21

Repealed

(Repealed by P.L.118-2007, SEC.38.)

IC 33-33-49-22

Appeals

Sec. 22. A party may appeal an order or a judgment of the court in any case where an appeal may be had from a similar order or judgment of the circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-23

Process

Sec. 23. The process of the court must have the seal affixed. The process must be attested, directed, served, returned, and in the form as provided for process issuing from the circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-24

Transfer of cases from circuit court

Sec. 24. The judge of the Marion circuit court may, with the consent of the court acting through the superior court presiding judge under rules adopted by the court, transfer any action, cause, or proceeding filed and docketed in the circuit court to the court by transferring all original papers and instruments filed in that action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-25

Transfer of cases to circuit court

Sec. 25. The presiding judge may, with the consent of the judge of the Marion circuit court and under rules adopted by the court, transfer any action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the Marion circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-26

Authority of circuit judge to sit in superior court

Sec. 26. The judge of the Marion circuit court may sit as a judge

of the court, with the court's permission, in all matters pending before the court, without limitation and without any further order, in the same manner as a judge of the court with all the rights and powers of an elected judge of the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-27

Oath

Sec. 27. Each judge, before entering upon the duties of office, shall take and subscribe the following oath or affirmation:

"I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Indiana and that I will faithfully discharge the duties of judge of the superior court of Marion County to the best of my ability."

The oath shall be filed with the clerk of the county.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-28

Judicial notice

Sec. 28. The court shall take judicial notice of all matters of which courts of general jurisdiction of Indiana are required to take judicial notice. The court shall also take judicial notice of all general ordinances of each city or municipality located in the county.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-29

Costs of appeals

Sec. 29. (a) When an appeal is taken from the court in criminal cases or proceedings under IC 34-28-5 (or IC 34-4-32 before its repeal), the amount of costs charged must be certified as a part of the transcript and charged as part of the costs in the court to which the appeal or proceeding is taken. The costs are in addition to any other clerk's service fee required by law.

(b) All costs charged in the court hearing or in the court trying an appeal must be charged and adjudged upon the hearing or trial in the appeal against a defendant who is convicted or who pleads guilty.

(c) In an appeal under this section, the defendant shall pay a transcript fee of thirty-five dollars (\$35) before the appeal may be transferred from the superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-30

Conditions of continued qualification for office of judge; complaints; retirement; vacancies

Sec. 30. (a) A judge remains qualified to hold office as long as the judge:

- (1) remains fair and impartial in judicial functions;
- (2) maintains a high standard of morality in dealings, public and private;
- (3) remains physically and mentally capable of performing all

the functions and duties of the office of judge; and

(4) continues to reside in Marion County.

(b) Complaints against a judge must be forwarded to the commission on judicial qualifications as provided in IC 33-38-13 by any judge of the superior court.

(c) If the judge wishes to retire before the judge's term has ended, the judge shall provide written notice to the presiding judge of the court. The judge shall continue to hold office until a successor has been appointed and qualified.

(d) When a vacancy occurs in the court by death, removal, retirement, or for any other reason, the governor shall appoint a successor judge who serves the balance of the term of the vacating judge. The successor judge must be a member of the same political party as the judge who is to be succeeded.

As added by P.L.98-2004, SEC.12. Amended by P.L.161-2011, SEC.9; P.L.201-2011, SEC.77.

IC 33-33-49-31

Magistrate

Sec. 31. (a) The presiding judge may appoint one (1) full-time magistrate under IC 33-23-5.

(b) A magistrate appointed under this section may only hear criminal proceedings.

(c) The magistrate continues in office until removed by the presiding judge.

As added by P.L.98-2004, SEC.12.

IC 33-33-49-32

Appointment of magistrates; transfer of proceeding back to judge

Sec. 32. (a) In addition to the magistrate appointed under section 31 of this chapter, the judges of the superior court may, by a vote of a majority of the judges, appoint:

(1) eight (8) full-time magistrates under IC 33-23-5 after December 31, 2007, and until January 1, 2014, not more than four (4) of whom may be from the same political party; and

(2) twelve (12) full-time magistrates under IC 33-23-5 after December 31, 2013, not more than six (6) of whom may be from the same political party.

(b) The magistrates continue in office until removed by the vote of a majority of the judges of the court.

(c) A party to a superior court proceeding that has been assigned to a magistrate appointed under this section may request that an elected judge of the superior court preside over the proceeding instead of the magistrate to whom the proceeding has been assigned. A request under this subsection must be in writing and must be filed with the court:

(1) in a civil case, not later than:

(A) ten (10) days after the pleadings are closed; or

(B) thirty (30) days after the case is entered on the chronological case summary, in a case in which the

- defendant is not required to answer; or
- (2) in a criminal case, not later than ten (10) days after the omnibus date.

Upon a timely request made under this subsection by either party, the magistrate to whom the proceeding has been assigned shall transfer the proceeding back to the superior court judge.

As added by P.L.98-2004, SEC.12. Amended by P.L.33-2005, SEC.1; P.L.80-2006, SEC.15; P.L.100-2013, SEC.1.

IC 33-33-49-33

Court administrator

Sec. 33. (a) The executive committee elected under section 14 of this chapter shall employ a court administrator to administer the business activities of the court. A court administrator is subject to rules of the court and oversight by the executive committee.

(b) The salary of the court administrator shall be set by the executive committee.

As added by P.L.98-2004, SEC.12. Amended by P.L.33-2005, SEC.2.

IC 33-33-49-34

Books, papers, and records of the court; forms

Sec. 34. (a) The clerk of the superior court shall furnish the following:

- (1) All blanks, forms, and papers required for use in all criminal cases and in all civil actions involving actions by a city or town for violations of municipal penal ordinances.
- (2) All books, papers, stationery, furniture, and other equipment and supplies necessary for keeping the records of the proceedings in all rooms of the superior court and for the transaction of all business of the court.
- (3) Necessary computerization of court records.

(b) The materials required under this section shall be furnished at the expense of the county.

(c) The presiding judge of the court, by an order entered on the court records signed by the presiding judge, shall determine and prescribe the forms of the following:

- (1) All summonses, notices, subpoenas, warrants, affidavits, complaints, writs, and all other papers and anything else required to be used in the cases relating to violations of criminal statutes or municipal ordinances.
- (2) All other books, records, papers, and documents to be used by the court and by the officers of the court and the prosecutors.

In the absence of an order under this subsection, those charged with the duty of prosecuting cases involving either criminal offenses or the violation of municipal ordinances may adopt, change, order, and use all necessary forms and instruments as conform substantially to the practice and procedure applicable.

As added by P.L.98-2004, SEC.12.